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March 15, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 19, 2005

Case Number: TSO-0282

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." [1] The individual's security clearance was suspended by the Director of a local Department of Energy (DOE) security office. For the reasons set forth below, I conclude that the individual's clearance should not be restored at this time.

I. BACKGROUND

The individual is employed by a DOE contractor in a position that requires him to maintain access authorization. In September 2004, the individual was arrested for Driving While Under the Influence of Intoxicants, Liquor (DUI) and Negligent Use of a Firearm. As required by the DOE regulations, the individual reported this arrest to the local security office. Upon receiving this report, DOE security summoned the individual for a Personnel Security Interview (PSI). After this December 2004 PSI, the individual was referred to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report setting forth the results of this evaluation and sent the report to DOE security. Subsequently, the Director of the local security office reviewed this report and the other information in the individual's file and determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The Director suspended the individual's access authorization and informed the individual of this action in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization. The individual requested a hearing on this matter. The Director forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer.

[1] An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (j), (h) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under criteria (j) and (h), the DOE alleges that the individual "has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse," and that this constitutes an "illness or mental condition which, in the opinion of a psychiatrist . . ., causes or may cause, a significant defect in judgment or reliability." The Letter cites the DOE psychiatrist's evaluation, in which he concludes that the individual suffers from alcohol abuse, which has caused, and may continue to cause, a significant defect in his judgement or reliability. The Letter also cites the individual's DUI arrest in September 2004, his DWI arrest in October 1989 and a fight between the individual and another serviceman that occurred in April 1981 while the individual was in the armed services. Both of the combatants had been drinking beer prior to the altercation.

Under criterion (l), information is derogatory if it indicates that the individual "has engaged in any unusual conduct or is subject to any circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security." As support for this criterion, the Notification Letter cites information indicating that the individual (i) continued to drink alcohol despite a court-imposed requirement that he refrain from drinking as a condition of his release from jail following his September 2004 DUI, (ii) intentionally lied to a police officer during this arrest by answering "no" when asked if he had been drinking and if he had any weapons on his motorcycle, (iii) told an Office of Personnel Management (OPM) Investigator that he had no intention of drinking and driving again on September 16, 2004, two weeks before his September 2004 DUI, (iv) allegedly assaulted a woman with the intent to commit homicide in July 1989; (v) pulled a folding knife in the presence of a female security inspector, opened it and held it six inches from her throat in 1985, (vi) regularly carries a loaded firearm on his motorcycle for protection and has inadvertently brought the weapon onto a local military base in violation of base regulations; (vii) forced entry into a female's house while she was inside; and (viii) indicated on a 1988 Personnel Security Questionnaire (PSQ) and during a January 1990 PSI that he had never received non-judicial punishment while serving in the military, then when confronted with information in the DOE's possession that he had received such punishment as a result of the April 1981 altercation, recanted during the PSI and admitted that he had received non-judicial punishment.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. THE TESTIMONIAL AND DOCUMENTARY EVIDENCE

The DOE introduced 53 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual submitted 19 exhibits and testified on his own behalf.

A. DEROGATORY INFORMATION

1. CRITERIA (H) AND (J)

The information relied upon by the DOE to establish the applicability of these criteria largely consists of the testimony and the written report of the DOE psychiatrist. DOE Exhibit (DOE Ex.) 19). He testified that his evaluation of the individual consisted of a thorough review of his

personnel security file and then a two hour interview. Hearing Transcript (Tr.) at 66, 71. In his written report, the DOE psychiatrist concluded that the individual suffers from Substance Abuse, Alcohol, with no evidence of reformation or rehabilitation, and that this constitutes an illness or mental condition that causes or may cause a significant defect in his judgement or reliability. DOE Exhibit 19 at 33-34, 43, 44. Specifically, he found that the individual met provisions (1) and (3) of the criteria for Substance Abuse set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV TR). [2]

With regard to criterion (1), substance use resulting in a failure to fulfill a major role obligation at work, home, or school, the DOE psychiatrist cited the individual's alleged consumption of alcohol on two occasions between his release from jail and his trial date on charges stemming from his 2004 DUI arrest. This usage allegedly occurred despite the fact that total abstinence from alcohol use was a court-imposed condition of the individual's release. DOE Ex. 19 at 22. The DOE psychiatrist further concluded that the individual's 2004 DUI arrest, his 1989 DWI arrest and the 1981 altercation for which the individual received non-judicial punishment while in the military satisfied the requirements of criterion (3), recurrent substance-related legal problems.

The DOE psychiatrist's finding that the individual's Alcohol Abuse constituted a condition that causes, or may cause, a significant defect in his judgement or reliability was primarily based on two factors. First, the DOE psychiatrist testified, Alcohol Abuse in general "increases the risk of accidental disclosure of classified information to an unacceptable risk." Tr. at 82. Second, the

[2] According to the DSM-IV TR, Substance Abuse is a "maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12 month period:

> (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance related absences, suspensions, or expulsions from school; neglect of children or household);
> (2) recurrent substance use in situations in which it is physically hazardous . . .;
> (3) recurrent substance related legal problems (e.g., arrests for substance related disorderly conduct);
> (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance . . . .

Furthermore, the symptoms must have never met the criteria for Substance Dependence for the substance in question. DSM-IV TR at 199.

individual had demonstrated, on two occasions, poor judgement by having a loaded firearm in his possession while under the influence of alcohol. *Id.*

Finally, the DOE psychiatrist opined that in order to demonstrate adequate evidence of rehabilitation, the individual would have to receive 100 hours of therapy in weekly meetings over a one year period at Alcoholics Anonymous (AA) or an equivalent program while completely abstaining from alcohol and any non-prescribed controlled substances during his therapy and for an additional period of one year. Adequate evidence of reformation, he said, would consist of three years' abstinence from alcohol and non-prescribed controlled substances. Tr. at 80-81. The DOE psychiatrist concluded that because the individual had only been abstinent for seven months as of the date of the hearing, he was not demonstrating adequate evidence of rehabilitation or reformation. Tr. at 84.

2. CRITERION (L)

The derogatory information pertaining to this criterion is set forth primarily in the DOE's exhibits. During his 2004 PSI and at the hearing, the individual admitted to having provided false information to police officers during his 2004 DUI arrest concerning his consumption of alcohol and his possession of a firearm. DOE Ex. 51 at 38, 46, 55-57, 281; Tr. at 50-51. Similarly, during that same PSI the individual acknowledged having told an Office of Personnel Management Investigator that he had no intention of drinking and driving in the future, two weeks before his most recent DUI arrest. DOE Ex. 51 at 151. The specifications in the Notification Letter that in 1985 he pulled a knife on a female security inspector and held it six inches from her throat, that he routinely is in possession of a loaded firearm and has inadvertently brought it onto a local military base in violation of base regulations and that he forced entry into his then-girlfriend's house after having an argument with her are all based on statements made by the individual during earlier PSIs. DOE Ex. 53 at 4-8, 52-53, 63-64; DOE Ex. 52 at 48-50.

The most serious allegation under criterion (l) concerns an incident in July 1989 during which the individual allegedly assaulted this girlfriend with the intent to commit homicide. According to an incident report completed by an officer of the local county sheriff's department and based largely on statements made by the girlfriend, she and the individual were sitting in a car at a softball game, when they began arguing about the individual's alleged involvement with another woman. When the individual became "very hostile," the girlfriend attempted to get out of the car. DOE Ex. 49 at 4. The individual grabbed her by her clothing to prevent her from exiting and then drove off. They continued to argue, and the individual repeatedly struck the left side of her head as he drove. The individual then reached under the right side of the driver's seat and pulled out a .45 caliber revolver. He allegedly held the gun to the left side of the girlfriend's head, and

then fired a round out the passenger side window, telling the girlfriend that he was going to kill her. He put the gun down, drove for a distance, and then had the girlfriend get out of the vehicle. He got out, and then allegedly grabbed her, picked her up, and tried to throw her off a cliff. She clung to him, they struggled, and she was able to break free and run. The individual got in his car to follow her, but she was able to elude him. She then walked to a nearby house and called the police. DOE Ex. 49. Although formal charges were filed against the individual, those charges were withdrawn when the girlfriend declined to go forward with the case. Tr. at 53.

The DOE's final allegation under criterion (l) concerns an inconsistency in the individual's representations concerning a disciplinary measure taken against him during his military service. On a 1988 PSQ, the individual responded "no" to the following question: "Have you ever been arrested, charged or held by Federal, military, state, or other law enforcement or juvenile authorities? Include all instances in which you were arrested, charged, or held, even if the charges were dismissed. Include all court martial or non-judicial punishment while in the military service." DOE Ex. 39 at 4. However, during his January 1990 PSI, the following exchange occurred.

> Q: On [the 1988 PSQ] you answered that you had never had any arrests or non-judicial punishment. Is that a correct statement?
> A. Yes, sir.
> Q. Okay. How about 1982 in the [armed services] here? Didn't you get jammed up with them?
> A. Okay. . . . All that stuff was dismissed so they said and I can't remember . . . remember who this was. But they said it . . . It's like it never happened. So that's why I . . . I changed that.

DOE Ex. 53 at 57. In fact, the individual did receive non-judicial punishment for his role in the April 1981 altercation. Specifically, the individual was demoted in rank and ordered to forfeit $100.00 of his pay. However, the demotion was suspended for approximately 90 days, at which time it was to be waived if the individual was able to avoid further trouble. The individual did not appeal this punishment. DOE Ex. 50.

B. MITIGATING INFORMATION

During his testimony at the hearing, the individual addressed the security concerns set forth in the Notification Letter. Concerning the 1981 altercation that led to the individual's non-judicial punishment, he testified that he and two other servicemen finished their "graveyard" shift at their base at 7 a.m. on the day of the altercation. They went to the clubhouse of a nearby golf course to have some beer. They were there for "maybe a couple [of] hours," the individual said. "We

were drinking pitchers, I remember, and so I don't remember how many glasses out of that pitcher that I had." Tr. at 27-28. During this period, he continued, one of the servicemen began using racial slurs. [3] The individual left and began walking back to his barracks, after informing the offending serviceman that he did not appreciate the slurs. However, he requested that the serviceman give him a ride if he should see the individual on his drive back to the barracks. After walking for approximately two miles, he saw the serviceman drive by while blowing his horn and yelling at the individual. The individual reached the barracks and went to the serviceman's room. "He wasn't there," the individual said, "which was good. So I let it slide." Tr. at 26. The individual then took a shower, ate, watched some television and went to bed.

That afternoon, after talking to the serviceman on the telephone, the individual met him at the serviceman's friend's house, and the serviceman wanted to fight the individual. Because a number of the serviceman's friends were also present, the individual insisted on another location for the altercation. The two went to a garbage dump, where the fight started at about 3 p.m. The fight was eventually ended by law enforcement personnel, who took the two combatants into custody. The individual said that he was not intoxicated, and he pointed out that the other combatant told the military authorities that "the incident . . . was completely unrelated to alcohol." Tr. at 24-28, Individual's Exhibit (Indiv. Ex.) 19 at 10.

The individual also testified about the incident during which he pulled out a knife in the presence of a female security inspector. He said that he and other site employees "received these buck folding knives, and as a group -- silly thing, we came up with a way to open the knife with one hand, so it was kind of like a bad game that we played down south in an area that I worked." On the day of the incident, he continued, the female security inspector and two others were in the area, "and she asked . . . if someone ran this barricade, . . . what would happen. So . . . I pulled out my knife, and I said, 'Well, we don't play that down here,' flipped it open, and put it back in the pouch." Because the inspector "made an issue of it to one of her supervisors," the individual was suspended for one week. Tr. at 14-15.

Concerning his alcohol-related arrests in 1989 and 2004, the individual pointed out that in both instances all of the charges were dismissed, and that his blood alcohol content as measured after the 1989 arrest was .08, which at the time was below the legal limit in the state where the arrest occurred. Tr. at 34, 48. Since his September 2004 arrest, the individual said, he has had two beers. Both were in May 2005, which was after his April 7, 2005 trial date. Tr. at 49. Regarding his provision of false information to police officers during this arrest, the individual testified that he had forgotten that the loaded firearm was on his motorcycle. Tr. at 51.

[3] The individual is a member of a racial minority.

The individual then addressed the July 1989 incident during which he allegedly assaulted his then-girlfriend with the intent to commit homicide. He explained that they were driving on a local interstate "and she was arguing with me about something, and she started hitting me, so as a defensive measure . . . I hit her, three times . . . to keep her off me." Tr. at 52. He removed his .45 revolver from beneath the front passenger's seat in order to prevent her from gaining possession of it, but at no time did he point the pistol at her or discharge the weapon. He also denied threatening to kill the woman and attempting to throw her off of a cliff. Tr. at 51-53.

The individual also responded to the other allegations set forth in the Notification Letter. The individual denied having forced his way into this same girlfriend's house. Concerning the incident that gave rise to this allegation, the individual said that he was visiting this girlfriend when he left her house to get something from his vehicle. The girlfriend then locked her door with the individual's keys inside her house. "So I got mad," the individual said, and "punched a window, broke a window. I called a 24 hour service, they came out, fixed the window, and that was the end of it." Tr. at 54. Concerning the discrepancy in his representations to the DOE about his receipt of non-judicial punishment while in the military, the individual stated that he thought that the incident had been expunged from his record. Tr. at 55. Also, he indicated that, if he did bring a loaded weapon onto a local military base, he did so by mistake. Tr. at 53. The individual further testified that he has consistently received positive job performance reviews, Tr. at 13, that he is currently enrolled in a four-year university and has done well in all his classes, Tr. at 16-17, and has been married for 15 years with no significant problems and no complaints from his wife about his drinking. Tr. at 22.

Finally, the individual discussed the alcohol counseling and treatment that he has received since his 2004 arrest. He testified that he participated in and completed a six-week alcohol treatment program at a local facility, and that he has been attending AA meetings since his discharge from that program and seeing his Employee Assistance Program (EAP) counselor on a regular basis. He observed that this counseling has helped him to abstain from alcohol use since May 10, 2005. Tr. at 56, 60; Indiv. Ex. 1, 2, 4, 17.

V. ANALYSIS

A. CRITERIA (H) AND (J)

At the hearing, the individual contested the validity of the DOE psychiatrist's diagnosis of Substance Abuse, Alcohol. Specifically, the individual argued that he incorrectly applied Substance Abuse criteria (1), recurrent substance use resulting in a failure to satisfy major role obligations at work, home or school) and (3), recurrent substance-related legal problems, in

arriving at his diagnosis. The individual contends that the factual bases relied upon by the DOE psychiatrist in applying these criteria are incorrect, and that even if this information is accurate, the individual's behavior did not meet the requirements of the criteria.

With regard to the factual basis underlying the DOE psychiatrist's application of criterion (1), the individual indicated at the hearing that the extent of his alcohol consumption after his 2004 arrest was two beers, both of which he drank after his trial date. Tr. at 49-50. This would, if true, mean that the individual complied with the condition of his release that he not consume alcoholic beverages until his trial date. However, I did not find the individual's testimony on this point to be credible. This is because the individual informed the DOE psychiatrist during his March 14, 2005 evaluation that he had consumed beer two weeks earlier and again during the Sunday before the evaluation. DOE Ex. 19 at 28. Moreover, according to the diagnostic admission criteria form completed by the individual's substance abuse counselor on May 17, 2005, the individual drank alcoholic beverages in February 2005. Indiv. Ex. 1. at 13. Consequently, I believe that the individual did drink alcohol on at least two occasions during the period between his 2004 arrest and his April 2005 trial, in violation of the conditions of his release from jail.

With regard to criterion (3), the individual argued at the hearing that the incident that led to his receipt of non-judicial punishment in 1981 while in the military was not alcohol-related. He testified that he was not intoxicated, and he pointed out the person with whom he was fighting told an investigator that the incident between him and the individual "was completely unrelated to alcohol." Tr. at 28; Indiv. Ex. 19 at 10.

I am not persuaded by the individual's argument. As an initial matter, the individual acknowledged during his psychiatric evaluation and during his 2004 PSI that the 1981 altercation was alcohol-related. DOE Ex. 19 at 27; DOE Ex. 51 at 161, 278-279; Tr. at 28. Although the individual insisted at the hearing that he was not intoxicated, the probative value of this statement is undermined by its self-serving nature, and by the individual's testimony that he didn't feel intoxicated at the time of his 2004 arrest either, even though his BAC at that time was measured at .14 and .15, almost twice the legal limit in the individual's jurisdiction. Tr. at 46. Moreover, I cannot dismiss the possibility that the statement given by the other combatant was motivated by a desire to cast his own behavior in a more favorable light. In sum, after consuming an undetermined amount of beer at a local golf clubhouse over a two hour period, the individual became incensed at statements made by another airman, and sought that airman out soon after returning to his barracks, presumably to fight him. Tr. at 26. Some hours later, the two did fight. Based on the individual's statements and the record as a whole, I believe it likely that the individual's consumption of alcohol did play a role in the 1981 altercation.

The individual further contends that even if the factual underpinning of the DOE psychiatrist's diagnosis is accurate, he improperly departed from the guidelines set forth in the DSM-IV TR in reaching his diagnosis. Specifically, he claims that his consumption of alcohol prior to his 2005 trial date did not constitute a failure to fulfill major role obligations at work, school or home within the meaning of Substance Abuse criterion (1), and that under criterion (3), the substance-related legal problems must recur within a 12 month period.

These arguments are equally unavailing. In a number of previous cases, hearing officers have accepted diagnoses of Substance Abuse as valid even though the diagnosticians did not strictly adhere to DSM-IV guidelines. *See, e.g.*, *Personnel Security Hearing*, Case No. VSO-0482 (January 4, 2001); *Personnel Security Hearing*, Case No. TSO-0075 (August 23, 2004). *See also Personnel Security Review*, Case No. VSA-0334, 28 DOE ¶ 83,017 (2001). These cases reflect an understanding that the diagnostic criteria were never intended to be applied in a mechanistic, "cookbook" fashion, but were instead intended "to serve as guidelines to be informed by [the] clinical judgement" of trained mental health professionals. DSM-IV-TR at xxxii.

In this case, the individual was either unable or unwilling to refrain from alcohol use during the six month period between his September 2004 arrest and his April 2005 trial despite the fact that such abstinence was a condition of his release from jail. The DOE psychiatrist could reasonably have concluded that a major role obligation of the individual, and indeed of anyone, is to adhere to legal, court-imposed requirements, and that failure to do so because of alcohol usage is indicative of a possible substance use disorder. Moreover, on three occasions the individual has been arrested or subjected to disciplinary proceedings because of, or in relation to, his alcohol usage. Each of these incidents occurred while the individual was holding a clearance and was presumably aware of the security concerns associated with excessive alcohol use. The two arrests took place while the individual was in possession of a loaded firearm. These facts amply support the DOE psychiatrist's conclusions that the individual suffers from Substance Abuse, Alcohol, and that this condition causes, or may cause, a significant defect in his judgement or reliability, within the meaning of sections 710.8(h) and 710.8(j) of the DOE's personnel security regulations. I also attach considerable significance to the fact that the individual was also diagnosed as suffering from Alcohol Abuse in May 2005 by a substance abuse counselor at the local treatment facility attended by the individual. Indiv. Ex. 1.

I further conclude that the individual has failed to show adequate evidence of rehabilitation or reformation from his condition. As previously set forth, the DOE psychiatrist recommended two years of abstinence and participation in AA or in a professionally run alcohol treatment program as adequate evidence of rehabilitation, and three years' abstinence as adequate evidence of reformation. As of the date of the hearing, the individual had refrained from alcohol use for a period of only eight months. Tr. at 56. In the absence of any expert testimony to the contrary, I

concur with the DOE psychiatrist's testimony that the individual has not demonstrated adequate evidence of rehabilitation or reformation. Tr. at 84. For the foregoing reasons, the individual has failed to adequately address the DOE's security concerns under criteria (h) and (j).

B. CRITERION (L)

I also find that the individual has not presented sufficient evidence to mitigate the DOE's security concerns under criterion (l). Most importantly, the individual's omission of significant information from his 1988 PSQ, his admitted lying during his 2004 arrest, and his provision of conflicting information during his psychiatric evaluation, his PSIs and the hearing, all leave me with serious doubts concerning the individual's honesty and trustworthiness.

As previously described, the individual did not disclose his receipt of non-judicial punishment while in the military in 1981 on his 1988 PSQ. Although the individual attempted to explain this omission by stating that he thought that the incident had been expunged from his record, the relevant question specifically required the individual to include all instances in which he was "arrested, charged, or held, even if the charges were dismissed." He was further instructed to "Include all court martial or non-judicial punishment while in the military service." DOE Exhibit 39. Therefore, the individual's belief as to the final disposition of the incident had no bearing on his obligation to disclose the punishment to the DOE. Moreover, during his January 1990 PSI, the individual again denied having received non-judicial punishment while in the military, until he became aware that the DOE was in possession of evidence to the contrary. DOE Exhibit 53 at 57. I can only conclude that the individual repeatedly, intentionally and improperly attempted to conceal his receipt of non-judicial punishment while in the military.

With regard to his 2004 DUI arrest, at the hearing the individual admitted to having told the police that he had not been drinking, when he in fact had consumed eight beers in the hours leading up to his arrest. Tr. at 50, 37-39. While this falsehood could possibly be understood as an attempt to avoid self-incrimination, the individual could have achieved this goal without lying by simply refusing to answer the question.

There are also inconsistencies between statements that the individual made during his psychiatric evaluation, during the hearing, and during at least one of his PSIs. One inconsistency concerns his consumption of alcohol between his September 2004 arrest and his April 2005 trial date. During his March 14, 2005 evaluation, the individual told the DOE psychiatrist that he had had one beer on the preceding Sunday and three beers three weeks earlier. DOE Ex. 19 at 28. However, during the hearing, the individual indicated that between his September 2004 arrest and the December 2005 hearing, he had two beers, both after his trial date. He had one beer "in May, I want to say. I'm not sure about that, but I . . . went out to dinner with my wife and had a

beer, and then I can tell you that on May 10th, I had a beer. That, I know for sure." Tr. at 49, 56. Concerning the incident during which he allegedly forced his way into his girlfriend's house, when asked during his January 1990 PSI whether he in fact did so, he indicated that he had, adding that "The reason why I broke that window is because she slammed the . . . window on my finger and my hand was stuck in there. So I . . . punched that window in and got the thing off." 1990 PSI at 52-53. However, when asked the same question at the hearing, he responded "No," explaining that he "went outside to get something from my car, and she locked the door with my keys inside. So I got mad, punched a window, broke her window. I called a 24-hour service, they came out, fixed the window, and that was the end of it." Tr. at 54. I recognize that there are likely to be variations between accounts given of various incidents over time, and that such variations are not necessarily indicative of dishonesty. However, the variations here are quite significant. When coupled with the individual's other dishonest behavior, they cause me to entertain serious doubts about his trustworthiness.

Because of these doubts, I also conclude that the individual has failed to adequately respond to the DOE's other allegations under criterion (l). It has long been established that once the DOE raises legitimate security concerns, it is incumbent upon the individual to produce sufficient evidence to show that restoring his clearance "would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). *See, e.g., Personnel Security Hearing*, Case No. VSO-0166, January 12, 1998; *Personnel Security Appeal*, Case No. VSA-0238, June 8, 1999. The only mitigating evidence submitted by the individual in this case were his versions of the events that transpired involving his former girlfriend and the female security guard in whose presence the individual brandished a knife. Because I am not convinced of the accuracy of these accounts, I cannot conclude that the individual has produced sufficient evidence to warrant the restoration of his clearance.

VI. CONCLUSION

Based on the factors discussed above, I find that the individual has failed to adequately address the security concerns set forth in the Notification Letter. Accordingly, I conclude that the individual has not demonstrated that restoring his clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: March 15, 2006